

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JEFFREY DESKOVIC,

Plaintiff,

vs.

CITY OF PEEKSKILL, PUTNAM COUNTY,
WESTCHESTER COUNTY, DAVID LEVINE,
THOMAS MCINTYRE, WALTER BROVARSKI,
EUGENE TUMOLO, JOHN AND JANE DOE
SUPERVISORS, DANIEL STEPHENS, LOUIS
ROH, MILLARD HYLAND, PETER INSERO, and
LEGAL AID SOCIETY OF WESTCHESTER
COUNTY,

Defendants.

Index No. CV-07-8150 (KMK)(GAY)

ORDER

STIPULATION FOR STAY
WITH RESPECT TO AMICO

KMK

LINDA MCGARR,

Plaintiff,

vs.

CITY OF PEEKSKILL, WESTCHESTER
COUNTY, DAVID LEVINE, THOMAS
MCINTYRE, WALTER BROVARSKI, EUGENE
TUMOLO, JOHN AND JANE DOE
SUPERVISORS, DANIEL STEPHENS, LOUIS
ROH, AND MILLARD HYLAND,

Defendants.

Index No. CV-07-9488 (KMK)(GAY)

CITY OF PEEKSKILL,

Third-Party Plaintiff,

vs.

WESTPORT INSURANCE CORPORATION as
successor-in-interest to NORTH RIVER
INSURANCE COMPANY,

Caption continued on next page

Caption continued from previous page

WESTPORT INSURANCE CORPORATION as a successor-in-interest to INTERNATIONAL INSURANCE COMPANY,

UNDERWRITERS AT LLOYD'S, LONDON,

CX REINSURANCE COMPANY LIMITED as successor-in-interest to CNA INTERNATIONAL REINSURANCE COMPANY,

CX REINSURANCE COMPANY LIMITED as successor-in-interest to CNA REINSURANCE OF LONDON, LIMITED,

SPHERE DRAKE INSURANCE PLC,

ILLINOIS UNION INSURANCE COMPANY,

UNITED NATIONAL INSURANCE COMPANY,

TRAVELERS INDEMNITY COMPANY as successor-in-interest to GULF INSURANCE COMPANY,

AMERICAN MOTORISTS INSURANCE COMPANY as successor-in-interest to AMERICAN PROTECTION INSURANCE COMPANY,

AMERICAN MOTORISTS INSURANCE COMPANY as successor-in-interest to SPECIALTY NATIONAL INSURANCE COMPANY,

HARCO NATIONAL INSURANCE COMPANY,
and

AMERICAN ZURICH INSURANCE COMPANY.

Third-Party Defendants.

WHEREAS, Third-Party Plaintiff City of Peekskill ("Plaintiff" or "Peekskill") has asserted claims against American Motorists Insurance Company as successor-in-interest to American Protection Insurance Company and American Motorists Insurance Company as successor-in-interest to Specialty National Insurance Company (collectively, "AMICO") in the above-entitled action.

WHEREAS, Peekskill and AMICO seek to reduce the expense and burden of litigation to themselves, to the other parties in this action, and to the Court;

WHEREAS, AMICO issued without limitation the following insurance policies to Peekskill (the "AMICO Policies");

American Protection Policies	
Policy No.	Policy Period
3QX119534-00	12/31/1999 – 12/31/2002
3QX119535-00	12/31/1999 – 12/31/2002
Specialty National Policies	
Policy No.	Policy Period
3XZ203739-00	12/31/2002 – 12/31/2003
3XZ203741-00	12/31/2002 – 12/31/2003

WHEREAS, an Agreed Order of Rehabilitation was entered for American Motorists Insurance Company on August 16, 2012 ("AMICO Rehabilitation Order") in the Circuit Court of Cook County, Illinois, County Department, Chancery Division in the following action, In the Matter of the Rehabilitation of Lumbermens Mutual Casualty Company and American Manufacturers Mutual Insurance Company: People of the State of Illinois, ex rel., Andrew Boron, Director of Insurance of the State of Illinois v. American Motorists Insurance Company, Case No. 12 CH 24227 ("Rehabilitation Action"), attached hereto as Exhibit 1;

WHEREAS, the AMICO Rehabilitation Order states that all persons are restrained and enjoined from bringing or further prosecuting any claim, action or proceeding at law or in equity or otherwise, against AMICO, including further activity against AMICO in this action under 215 ILCS 5/189. See AMICO Rehabilitation Order regarding "mandatory and prohibitive injunctions", attached hereto as Exhibit 1, ¶ 12.

NOW, THEREFORE, in consideration of this Stipulation for Stay, Peekskill and AMICO, by and through their respective counsel of record, hereby mutually agree to the following:

The Court
orders

KMK

*ORDER*STIPULATION FOR STAY*(RECEIVED)*

IT IS HEREBY ~~STIPULATED AND AGREED~~, by and between the undersigned parties that all claims are hereby stayed as against Third-Party Defendants American Motorists Insurance Company as successor-in-interest to American Protection Insurance Company and American Motorists Insurance Company as successor-in-interest to Specialty National Insurance Company.

ORDERED

IT IS FURTHER ~~STIPULATED AND AGREED~~; that AMICO, or through its affiliated company Lumbermens Mutual Insurance Company, will continue to fund an allocable share of the defense of the two above captioned underlying actions until otherwise directed by the State of Illinois and/or the court in the Rehabilitation Action. Peekskill reserves all rights and does not waive any rights to challenge any action taken by AMICO, or its affiliated company Lumbermens Mutual Casualty Company or any other related entity.

(RECEIVED)

IT IS FURTHER ~~STIPULATED AND AGREED~~, that Peekskill may withdraw its consent to this Stay for any reason after providing seven (7) days written notice (via letter or email) to AMICO. AMICO then may move the Court to re-institute the stay. Peekskill would agree that any motion to re-institute the stay would not require any pre-motion conference (where agreed to by the Court). Peekskill would not object to AMICO bringing such a motion but reserves the right to oppose the motion.

(RECEIVED)

IT IS FURTHER ~~STIPULATED AND AGREED~~, that each undersigned party shall bear its own costs and attorneys' fees.

(RECEIVED)

ON IT IS FURTHER ~~STIPULATED AND AGREED~~, that nothing contained in this Stipulation shall operate so as to create an estoppel as to any finding of fact, or create or expand any rights, remedies or liabilities of the parties hereto, except that Peekskill's stay tolls, as of the date of filing of the Third-Party Complaints in the above referenced actions, any potentially applicable statutes of limitations of any jurisdiction as to all claims in the Third-Party Complaints in the above referenced actions. Moreover, all time-based defenses to Peekskill's claims in the Third-Party Complaints in the above referenced actions are preserved to the extent they exist, but only to the extent they existed, as of the date of the filing of the Third-Party Complaints in the above referenced actions.

(RECEIVED)

IT IS FURTHER ~~STIPULATED AND AGREED~~, that in the event the stay against AMICO is lifted in this action, the City of Peekskill and AMICO reserve the right to argue that the law of the case doctrine may apply with respect to the AMICO Policies with respect to any orders entered by the Court against other parties in this action. AMICO will remain on the service list and ECF so as to receive service of all motions, pleadings and orders in this action even though the claims against it have been stayed.

(RECEIVED)

IT IS FURTHER ~~STIPULATED AND AGREED~~, that this ~~Stipulation~~ does not constitute a representation, assertion or admission of the rights, duties or obligations of any party under the AMICO Policies subject to this ~~Stipulation~~. Furthermore, this ~~Stipulation~~ does not constitute a representation or admission regarding the substantive merits of any claim.

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Orders

subsequently asserted against or among the parties to this Stipulation or against the AMICO Policies. Moreover, AMICO reserves all of its defenses.

*Order**Order**dm*

~~IT IS FURTHER STIPULATED AND AGREED~~, that this ~~Stipulation~~ may be signed in counterparts with all counterparts together constituting one complete Stipulation and that signatures received by facsimile or e-mail shall be deemed an original for purposes of this Stipulation.

DATED: OCTOBER 18, 2012

Dated: OCTOBER 18, 2012

ANDERSON KILL & OCLICK, P.C.

RIVKIN RADLER, LLP

By:

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ATTORNEYS FOR THIRD-PARTY
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INTEREST TO AMERICAN
PROTECTION INSURANCE
COMPANY; AND AMERICAN
MOTORISTS INSURANCE
COMPANY AS SUCCESSOR-IN-
INTEREST TO SPECIALTY
NATIONAL INSURANCE
COMPANY

SO ORDERED this 18th day of April, 2013

The Honorable Kenneth M. Karas
United States District Judge